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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.      | CONFIRMATION NO. |
|--|-------------|----------------------|--------------------------|------------------|
| 10/714,070   | 11/14/2003  | John D. Dobak III    | 010007                   | 2629             |
| 7590   | 07/28/2005  |                      | EXAMINER                 |                  |
| Mayer Fortkort & Williams<br>2nd Floor<br>251 North Avenue West<br>Westfield, NJ 07090 |             |                      | ROLLINS, ROSILAND STACIE |                  |
|  |             |                      | ART UNIT                 | PAPER NUMBER     |
|  |             |                      | 3739                     |                  |

DATE MAILED: 07/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/714,070             | DOBAK ET AL.        |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Rosiland S. Rollins    | 3739                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 17 May 2005.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-9 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-9 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/17, 8/04, 3/15</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4 and 7 are rejected under 35 U.S.C. 102(e) as being anticipated by Gobin et al. (US 6416533). In figures 17-19 Gobin et al. disclose a catheter system to change the temperature of blood by heat transfer to or from a circulating working fluid comprising an inlet lumen to introduce a circulating working fluid and an outlet lumen to extract a circulating working fluid, the outlet lumen having a shape that induces mixing in blood flowing past the outlet lumen or other working fluid.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gobin et al. '533. Gobin et al. teaches all of the limitations of the claims except the working fluid being saline. It would have been obvious to one having ordinary skill in the art at the

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time the invention was made to provide saline as the working fluid, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gobin et al. further in view of Hed (US 5139496). Gobin et al. teach all of the limitations of the claims except the working fluid supply including a pump wherein the pump circulates the working fluid. Hed disclose a similar device and teach that it is old and well art to provide a pump as a part of the working fluid supply as a means of circulating the working fluid. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a pump as part of the working fluid supply as a means of circulating the working fluid on the Gobin et al., particularly in view of the teaching of Hed.

Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gobin et al. Gobin et al. teach all of the limitations of the claims except an inflatable heat transfer element. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a heat transfer element constructed of an inflatable material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1-9 have been considered but are moot in view of the new ground(s) of rejection.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rosiland S. Rollins whose telephone number is (571) 272-4772. The examiner can normally be reached on Mon.-Fri. 9:00 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Rosiland S Rollins  
Primary Examiner  
Art Unit 3739